

BOARD OF APPEALS CASE NO. 5356

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BEFORE THE

APPLICANT: David Beck

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an addition
within the required rear yard setback;
408 Fox Catcher Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 5/21/03 & 5/28/03

HEARING DATE: July 16, 2003

Record: 5/23/03 & 5/30/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, David A. Beck, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an addition within the required thirty-five (35) foot rear yard setback (proposed 28.5 foot) in an R2/COS District.

The subject parcel is located at 508 Fox Catcher Road, Bel Air, Maryland 21015 in the First Election District, and is more particularly identified on Tax Map 56, Grid 2E, Parcel 581, Lot 85. The parcel contains approximately 7,971 square feet more or less.

Mr. Beck appeared and testified that he is the owner of the subject property. He stated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein.

The witness described the subject property as a trapezoid shaped lot, deeper on one side than the other. The lot is improved by an existing two-story dwelling, with an attached two-car garage, and a concrete driveway. The witness testified that his home is different than other homes in the neighborhood, in that it is deeper than it is wide. Mr. Beck stated that he proposes to construct a 16 by 16 foot, fully enclosed addition to the rear of the existing dwelling. The proposed addition will be built from the same materials as the existing structure, and will be constructed in a manner which is compatible with that structure. The construction would result in an encroachment of approximately 6.5 feet into the required rear yard setback, and it would be 28.5 feet from the property line at the closest point.

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Mr. Beck testified that due to the shape of the property, and the placement of the existing dwelling, the proposed location is the only practical place to construct an addition onto the existing dwelling.

The only available access to the rear of the property is via an existing sliding glass door from the kitchen area. The hot water heater and vent pipe are located at the right rear of the dwelling, and placement of the addition to the left of the home will avoid conflict with these utilities. In addition, placement of the proposed addition at the proposed location will avoid conflict with existing second story windows, and allow for proper drainage angles from the roof of the addition.

The Applicant identified three photographs, included as Attachment 8 to the Department of Planning and Zoning Staff Report. The top photograph shows the front of the existing dwelling. The second and third photographs depict the rear of that dwelling, and the location of the proposed addition.

Mr. Beck testified that several other homes within the Saddle Ridge neighborhood contain similar additions. According to the Applicant, the proposed addition will be similar in size and appearance to those found on other homes within the neighborhood. The proposed addition will also be compatible with, both the existing dwelling, and other homes in the neighborhood.

Finally, the Applicant stated that, in his opinion, the granting of the requested variance will not have any adverse impact on adjacent properties. According to the Applicant, his home is one of the smallest in the neighborhood, and the addition will therefore have a positive impact on the value of surrounding properties. In addition, the proposed structure will be approximately 40 feet from the closest dwelling. Mr. Beck introduced a letter submitted with his Application (Applicant's Exhibit 1) signed by all adjoining property owners, each of whom expressed his or her approval of "all aspects of the planned addition and its proposed location."

The Department of Planning and Zoning recommended approval of the subject request in its June 23, 2003 Staff Report, stating:

"The Department finds that the subject property is unique based on the configuration of the lot and its orientation to the adjacent lots to the rear. The request, if approved, will not adversely impact the adjacent properties or the intent of the Code."

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No witnesses appeared in opposition to the requested variance.

CONCLUSION

The Applicant, David A. Beck, is requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an addition within the required thirty-five (35) foot rear yard setback (28.5 foot proposed) in a R2/COS District. Section 267-36B Table V, of the Harford County Code, which sets forth, "Design requirements for specific usage" in an R2 Urban Residential District, requires a minimum 35 foot rear yard depth for single family detached homes.

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, *supra*, at 721. If the subject property is unique, the trier of fact may proceed to the second prong of the test. The second prong involves a determination of whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The property is trapezoidal in shape, is deeper on one side than the other, and has a diagonal rear property line. The existing dwelling was constructed further back on the lot, than the required 30 foot front set back, resulting in a reduction of rear yard space. In addition, the existing home is different than other homes in the neighborhood, in that it is deeper than it is wide. This results in an additional reduction of usable rear yard space. The location of the existing rear access, hot water heater, and vent pipes, along with the placement of the home, make the proposed location the only practical place in which to construct an addition to the dwelling.

The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty for the Applicant. Numerous other homes in the neighborhood have similar additions. If the requested variance is not granted, the Applicant will be unable to expand his existing living space, and will therefore be denied property rights commonly enjoyed by other homeowners within the neighborhood.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. The proposed construction is architecturally compatible with the existing structure, and with other properties in their neighborhood. Because the home is one of the smallest in the neighborhood, the construction will likely increase the value of surrounding properties.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date JULY 29, 2003

Rebecca A. Bryant
Zoning Hearing Examiner